IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1418 of 1979

For Approval and Signature:
HON'BLE MISS JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LAXMIBEN NATHABHAI, WD/O NATHABHAI & 8 - Petitioner(s)

Versus

DIVYANGBHAI MADHUSADAN JOSHI & 2 - Respondent(s)

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Appearance :
MR SK JHAVERI for Petitioner No(s).: 1 – 1.

MR GM JOSHI for Respondent No(s).: 1/1 to 1/4.
MR GM AMIN for Respondent No(s).: 2, 2,2.
RULE SERVED for Respondent No(s).: 3.
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CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT
Date : 04/08/2005

ORAL JUDGMENT

Feeling aggrieved by the judgment and order dated 14th September, 1979 passed by the Appellate Bench, Small Causes Court, Ahmedabad in Civil Appeal No.331/1976, the appellant (defendant in Civil Suit No.1684/1972) has preferred the present Revision Application under Section

29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as, **"the Rent Act"**).

The predecessor of the respondent no.1-plaintiff instituted H.R.P. Civil Suit No.1684/1972 in the Court of Small Causes, Ahmedabad for recovery of possession of the suit premises bearing Survey No.571/2/15; Municipal Census No.2124/15 situated at Vadaj, Ahmedabad and for recovery of the amount of arrears of rent. According to the plaintiff the property in question was purchased by her father one Somnath Govinddas on 24th March, 1939 in a court auction. The suit premises, a hut constructed on the said property was leased to the defendant for a monthly rent of Rs.10=00. After the death of her parents the plaintiff had become owner of the said property. The defendant was in arrears of rent since 1st January, 1963. A notice of demand and termination of tenancy was given on 11th July, 1969. The said notice was received by the defendant. However, he did not remit the amount of rent due nor did he handover the possession of the suit premises. Therefore, the suit. The suit was contested by the defendant vide written statement (Exh.16). According to the defendant the agreed rent of the suit premises was

Re.0=50 ps. and that was the standard rent of the suit premises; and that he was ready and willing to pay the said rent. Pending the suit the plaintiff Babuben passed away. By order made below application Exh.9 her husband Madhusudan Joshi was substituted as the plaintiff. The trial Court, by judgment and order dated 21st July, 1976, allowed the suit and passed decree for possession, for arrears of rent and for mesne profits in favour of the plaintiff. The trial Court held that the standard rent of the suit premises was Rs.8=00 per month; that the defendant was in arrears of rent as alleged and that the defendant was not ready and willing to pay the rent.

Feeling aggrieved, the defendant preferred Civil Appeal No.331/1976 before the Appellate Bench, Small Causes Court, Ahmedabad. Pending the Appeal the defendant moved application for impleading the sisters of the deceased plaintiff Babuben as party respondents. The said application was allowed. Accordingly, the respondents nos.2 and 3 were impleaded in the Appeal. The defendant also moved application Exh.16 for permission to lead additional evidence. According to the defendant, the deceased Somnath Govinddas had executed a Will under which the property in question was bequeathed to his

daughters, the plaintiff and her sisters. Under the said Will, after the death of the plaintiff Babuben the property would devolve upon the other two sisters. The husband of the deceased plaintiff, therefore, had no right to continue the suit. The said application was rejected. The lower appellate Court confirmed the finding that the standard rent of the suit premises was Rs.8=00 per month and that the defendant was in arrears of rent since 1st January, 1963 as alleged. The lower appellate Court also recorded that pending the suit the defendant did not deposit the standard rent in the Court. After the date of the suit also the defendant did not pay the rent regularly and on the date of the order by the appellate Court he was in arrears of rent to the extent of Rs.1,600=00. The defendant had failed to comply with the conditions mentioned in Section 12(3)(b) of the Rent Act. The defendant was, therefore, not entitled to protection against eviction conferred by Section 12(3)(b) of the Rent Act. The Appeal was accordingly dismissed. Therefore, the present Revision Application.

Mr.Jhaveri has submitted that both the Courts below have erred in appreciating the evidence on record. He has read over the oral evidence led before the trial Court.

He has submitted that on the basis of evidence on record no reasonable man could have recorded a finding against the defendant. He has submitted that there was no evidence on record that the standard rent of the suit premises was Rs.8=00 per month. The evidence of the aforesaid Madhusudan Joshi could not have been believed as he had no personal knowledge and his evidence was hearsay. In absence of any other evidence the Court ought to have believed the evidence of the defendant. He has further submitted that under the testamentary disposition of the suit property by the aforesaid Shri Somnath Govinddas, after the death of the plaintiff Babuben the property would devolve upon her sisters and not upon her husband. Her husband Madhusudan Joshi, therefore, had no right to continue the suit. The suit was, therefore, not maintainable. He has also submitted that the lower appellate Court has erred in rejecting the aforesaid application Exh.16. He has submitted that the defendant could not have the knowledge of the Will executed by the deceased Somnath. The defendant, therefore, ought to have been allowed to lead additional evidence before the lower appellate Court. If the defendant were permitted to lead additional evidence the matter would have been decided otherwise.

Mr.Joshi has contested the Revision Application. He has submitted that the suit at the hands of the deceased plaintiff Babuben was indisputably maintainable. After her death, her husband continued the suit as her legal representative. If at all anybody can object to the said Madhusudan Joshi continuing the suit as the legal representative of the deceased plaintiff it could be the respondents nos.2 and 3. The respondents nos.2 and 3 were impleaded in the Appeal and they are before this Court also. At no point of time the said two sisters objected against the aforesaid Madhusudan Joshi continuing the suit as the legal representative of the deceased plaintiff Babuben. He has next submitted that both the Courts below have recorded concurrent finding with respect to the standard rent of the suit premises; and the defendant being a tenant in default, not ready and willing to pay the rent. This Court, in exercise of its revisional jurisdiction, shall not interfere with the concurrent finding recorded by both the Courts below. In support thereof, he has relied upon the judgment of the Hon'ble Supreme Court in the matter of **Patel Valmik Himatlal and Others v/s. Patel Mohanlal Muljibhai (dead) Through LRs.** [1999(1) GLR 15]. He has also drawn my

attention to the finding recorded by the lower appellate Court that the defendant was in arrears of rent. Pending the suit he did not deposit the rent regularly. After passing of the decree by the trial Court also he continued to be in arrears. In the submission of Mr.Joshi both the Courts below have rightly passed decree for eviction in favour of the plaintiff.

I am unable to agree with Mr.Jhaveri. I do not agree that on the basis of the evidence on record no finding adverse to the defendant could have been recorded. Even if on appreciation of the evidence on record another view is possible, this Court shall not exercise appellate jurisdiction of reappreciating the evidence and substituting the finding recorded by both the Courts below. As to the leave to lead additional evidence before the lower appellate Court, I see no substance in the contention raised by Mr.Jhaveri. It is not in dispute that the defendant was indeed in arrears of rent since 1st January, 1963 as alleged. In answer to the notice of demand he did not pay the rent. Pending the suit also he did not pay the amount of rent due or the monthly rent regularly. After the decree was passed by the trial Court also the defendant did not pay the rent regularly as

envisaged by Section 12(3)(b) of the Rent Act. As calculated by the lower appellate Court on the date of the judgment of the lower appellate Court the defendant was in arrears of rent for 80 months. The defendant has rightly been held to be not ready and willing to pay the standard rent.

In above view of the matter, no interference is warranted. The Revision Application is dismissed with cost. Rule is discharged. Interim relief stands vacated.

(Ms. R.M.Doshit, J.)

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